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Attorneys for Defendant Google LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**GOOGLE LLC'S OPPOSITION TO
PLAINTIFFS' MOTION FOR LEAVE TO
SUBMIT ADDITIONAL BRIEFING
CONCERNING DISPUTES P1 AND P2**

Referral: Hon. Susan van Keulen, USMJ

1 Plaintiffs' Motion for Leave to Submit Additional Briefing Concerning Disputes P1 and P2
 2 ("Motion") in advance of the August 12 hearing should be denied for one simple reason:¹ the parties
 3 continue to meet and confer on custodians and search terms, and Google anticipates that the parties
 4 can propose a joint schedule and page limit for custodian briefing during the upcoming hearing.²

5 Plaintiffs' Motion was filed on August 3, a day after the August 2 Joint Submission. As
 6 Google indicated in the Joint Submission, Google had not yet completed its investigation of Plaintiffs'
 7 good cause arguments for four custodians (whom Plaintiffs proposed for the first time on July 27,
 8 mere days before the Joint Submission). *See* Dkt. No. 230 at 4-5. Google promptly performed its
 9 investigation and informed Plaintiffs of its positions on August 9. Moreover, during an August 5
 10 meet and confer where the parties discussed Disputes P1 and P2, the parties committed to investigate
 11 potential narrowing or prioritization of the custodian dispute and to provide follow-up responses to the
 12 issues discussed during the meet and confer. As a result, the parties were not at an impasse on
 13 Disputes P1 and P2 as of August 2 and Google did not complete its investigation until August 9.

14 Google proposes that the parties set a briefing schedule and page limit to address the parties'
 15 respective views on good cause for Dispute P1 (which should account for the to-be-determined
 16 number of custodians whom Plaintiffs intend to brief), with any necessary briefing for Dispute P2 to
 17 occur *only after* the proposed list of custodians subject to Dispute P1 has been resolved. Such
 18 bifurcation is appropriate where (i) the parties are continuing to discuss overlapping search terms and
 19 a counter-proposal to the very terms Plaintiffs proposed with the Joint Submission (*see* Dkt. No. 230
 20 at 7-10); (ii) once agreement on a counter-proposal is reached, Google will test those revised terms
 21 against the ESI for the custodians for whom good cause exists, and the parties can further negotiate
 22 any reasonable limitations before raising any disputes with the Court; and (iii) judicial economy
 23 counsels in favor of resolving search term disputes only for those custodians for whom good cause is

24 _____
 25 ¹ To the extent the Court is inclined to grant briefing prior to the August 12 hearing, Google respectfully requests that the Court order a joint filing so that the parties will be apprised of the opposing party's arguments prior to filing.

26 ² Plaintiffs' Motion violates Local Rule 7-11, as it fails to include the required declaration "that
 27 explains why a stipulation could not be obtained." L.R. 7-11(a). Had Plaintiffs sought Google's
 28 position on a stipulation, Google would have offered to reach agreement on a briefing schedule along the lines of what it hopes the parties can propose for the Court's consideration on August 12.

1 established (and not the full list of custodians or terms in Plaintiffs' Proposed Order, which may
 2 include custodians whom Plaintiffs no longer intend to brief or terms that may change on account of
 3 the parties' ongoing negotiations). Accordingly, Google has proposed that the parties first agree on a
 4 briefing schedule and page limit for any remaining custodians that Plaintiffs intend to brief for Dispute
 5 P1, which Google hopes the parties can jointly present for the Court to consider.

6 Based on the foregoing, Google respectfully requests that the Court deny Plaintiffs' Motion
 7 and permit the parties to provide the Court with an update on this issue during the August 12 hearing.

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 10 DATED: August 9, 2021

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